

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK09-82566-TJM
) A10-8001-TJM
COLLEEN A. KACIN,) CH. 7
)
Debtor(s).)
BEL FURY INVESTMENT GROUP, LLC,)
)
Plaintiff,)
)
vs.)
)
COLLEEN A. KACIN,)
)
Defendant.)

ORDER

This matter is before the court on Filing #12, Motion to Reconsider, filed by Defendant Colleen Ann Kacin, and was taken under advisement on June 3, 2010. Plaintiff is represented by Brian J. Muench and Defendant is represented by Erin M. McCartney.

Plaintiff filed this action under 11 U.S.C. §§ 523(a)(2)(A) and (B) and 727(a)(4) after the bar date contained in the Bankruptcy Rules. Defendant moved to dismiss as untimely filed. Plaintiff's counsel convinced the judge that the time problem was caused by illness and weather issues. The motion to dismiss was denied and Plaintiff was permitted to file an amended complaint. Defendant filed a motion to reconsider, and, after the amended complaint was filed, filed an answer to it, preserving the untimeliness claim. Plaintiff asserts the motion to reconsider has been waived by filing the answer.

The Supreme Court, in Kontrick vs. Ryan, 540 U.S. 443, 123 S. Ct. 906 (2004), ruled that the timeliness issue may be raised any time before the case is litigated. Therefore, defendant has not waived it.

IT IS ORDERED that the motion to reconsider, Filing #12, is granted and the adversary proceeding is dismissed. The judge made an error when he found the circumstances explained by counsel excused the late filing. Rule 4007(c) and Rule 4004(a) and (b) are clear. No extension of time for filing is allowed without a motion filed prior to the expiration of the bar date. Fed. R. Civ. P. 9006(b)(3); In re Perez, 177 B.R. 319, 322 (Bankr. D. Neb. 1995).

DATED: June 8, 2010

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

Brian J. Muench
*Erin M. McCartney
U.S. Attorney

Movant (*) is responsible for giving notice to other parties if required by rule or statute.